INDEX

351-217—69—1

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, ET AL., APPELLANTS

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, ET AL.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Missouri (A. 25–37, 37–51) are reported at 432 S.W. 2d 328. The Circuit Court of Jackson County, Missouri, in which the suit was brought, wrote no opinion (see A. 15–16).

JURISDICTION

The judgment of the Supreme Court of Missouri was entered on September 9, 1968 (A. 24), and a timely petition for a rehearing was denied on October 14, 1968. A notice of appeal was filed on November 14, 1968, and the jurisdictional statement was filed on January 13, 1969. Probable jurisdiction was noted on

March 3, 1969 (393 U.S. 1115). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

Section 178.820 of the Revised Statutes of Missouri provides, in pertinent part, as follows:

> TRUSTEES ELECTED AT LARGE OR FROM COMPONENT DISTRICTS—TERMS—QUALIFICATIONS
>
> 1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed dis-

trict. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

QUESTION PRESENTED

Whether the equal-population principle enunciated in *Reynolds* v. *Sims,* 377 U.S. 533, and related cases, and applied to the local governmental level in *Avery* v. *Midland County,* 390 U.S. 474, extends to the district-based election of members of school boards.

INTEREST OF THE UNITED STATES

The United States has consistently participated as *amicus curiae* in significant cases involving alleged malapportionment, from *Baker* v. *Carr,* 369 U.S. 186, through *Wesberry* v. *Sanders,* 376 U.S. 1, and *Reynolds* v. *Sims,* 377 U.S. 533, to *Avery* v. *Midland County,* 390 U.S. 474. Our role in those cases was

prompted by the importance of the fundamental right sought to be effectuated—the right of each citizen to full, fair and effective participation in the electoral process, at all levels of government, on an equal basis and without regard to where he happens to reside. The instant case at least potentially presents the broad question whether the equal-population principle of *Reynolds,* held applicable to local governing bodies generally in *Avery,* applies as well to school boards whose members are elected from districts. Our participation here thus seems warranted to vindicate the public interest in fair representation on those important bodies of local government.

STATEMENT

Appellants are citizens and taxpayers of the Kansas City, Missouri, school district and of appellee junior college district. They brought suit in the Circuit Court of Jackson County, Missouri, challenging the constitutionality, principally under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, of the method prescribed by Section 178.820 of the Revised Statutes of Missouri for the election of trustees of the Junior College District of Metropolitan Kansas City (see A. 4–11). Appellants sought both declaratory and injunctive relief (see A. 11–13). Appellees, the junior college district, certain officials thereof (including four of its five trustees), and the Attorney General of Missouri, moved to dismiss the action on the ground that the petition failed to state a claim upon which relief could be granted.

Appellee junior college district is one of eleven such junior college districts in Missouri. In six of them the boards of trustees are elected under the statutory formula prescribed in Section 178.820, and in five they are elected at large. The district here involved was organized in 1964 pursuant to a vote of the people, and it comprises the metropolitan area of Kansas City, Missouri, along with certain outlying sections, approximately 400 square miles overall. Contained within this district are eight local school districts, including the Kansas City School District, the "school enumeration"[1] of which, during the past four years, has varied between 59.49 percent and 63.55 percent of the total school enumeration of the entire district. Under the formula prescribed by the statute challenged by appellants, only three of the six trustees

[1] See Mo. Rev. Stat., § 167.011, which requires that "the school board of each district in the state shall cause to be taken * * * an enumeration of all persons between the ages of six and twenty years, resident within the district * * *." Such an enumeration may be taken annually, but is required to be obtained at least once every five years. School enumeration figures, rather than total population figures, were utilized throughout the instant litigation, by both courts and parties, without serious challenge (see A. 18). The figures used here, it should be noted, were for the 1966–67 school year (see A. 23). Absent any showing to the contrary, it is reasonable to assume that these figures bore a consistent relationship to total population figures throughout the area, and that they were not used for any evasive or improper purpose—but rather simply because they were readily available and more current than federal census figures would have been. See, *e.g.*, *Burns* v. *Richardson*, 384 U.S. 73, 90–97; *Ellis* v. *Mayor and City Council of Baltimore*, 352 F.2d 123, 126–130 (C.A. 4); *Hartman* v. *City and County of Denver*, 440 P.2d 778, 781–782 (Colo. Sup. Ct.).

who serve as members of the junior college district's board—or 50 percent—are elected from the Kansas City School District.[2] The powers, functions and duties of junior college districts under Missouri law are prescribed in Sections 178.770 through 178.890 of the Revised Statutes of Missouri. Included among the powers of such junior college districts—which parallel those of other school districts in the State—are the power to sue and be sued, to levy and collect taxes within prescribed statutory limitations, to issue bonds within prescribed statutory restrictions, to administer the junior college system wthin its area, including the hiring and firing of teachers and employees, the letting of contracts, the collection of fees, and the supervision of student discipline, to pass on the annexation of school districts to the junior college district, and to acquire real property by condemnation (see A. 40, n. 1). The basic function of the junior college districts is to supervise the operation of a program of two-year public education at the college level within their respective areas (see Mo. Rev. Stat., § 178.850).

All of the above data was before the circuit court. Appellants contended that the equal-population principle of *Reynolds* was applicable to the election of

[2] Figures for each of the other five junior college districts whose trustees were elected from districts showed similar disparities from population-based representation, all running necessarily against the more populous areas, which is the inevitable effect of the statutory formula (see A. 23). These figures, it might be pointed out, were for the 1963–64 school year (*ibid.*). Under the statutory formula, it might be noted, a component district having in excess of 90 percent of the area's total population would be entitled to elect only four of the six junior college district trustees (see *supra*, p. 2).

junior college district trustees, and that the existing districting scheme, under the statutory formula, invidiously discriminated against residents of the disfavored Kansas City School District. Appellees responded that, even if *Reynolds* did apply to local bodies exercising general governmental powers, it was inapplicable to special-purpose units like school boards which exercised essentially administrative and not legislative powers. On December 2, 1966, the lower court entered an order sustaining appellees' motions to dismiss, and thereafter overruled a motion for rehearing or new trial and entered a final judgment dismissing appellants' petition and cause of action with prejudice (A. 15–16).

Appellants then took an appeal, under stipulated facts, to the Supreme Court of Missouri (see A. 16–23). That court reviewed the various contentions of the parties, and ultimately determined that the lower court had properly dismissed appellants' suit. In substance, the Missouri court concluded that this Court's intervening decision in *Avery* was not controlling because that case involved a "general governing body" of a county exercising both legislative and administrative functions; found that this Court's earlier decision in *Sailors* v. *Board of Education,* 387 U.S. 105, was closely parallel because it involved a school board performing "esssentially administrative functions" and, in the Missouri court's view, did not turn on the non-elective method by which the members of the board there involved were selected; and rejected the holdings and reasoning of a number of lower court cases involving the application of the

equal-population principle to local governing bodies, including several decisions relating to school boards. Relying on the consideration that school districts are special-purpose, single-function units of local government, as distinguished from counties or cities, and postulating that the powers of the junior college district here involved were rather limited in scope, the Missouri court held that the equal-population principle was inapplicable and that the method by which junior college district trustees were elected under the pertinent statute was consistent with the Fourteenth Amendment. Accordingly, it affirmed the judgment below, with one judge dissenting (A. 25–51).

ARGUMENT

INTRODUCTION AND SUMMARY

At the outset, it should be noted that the instant case is somewhat atypical, in that the immediate subject is not the common type of independent school district found throughout the country, operating local elementary and secondary public schools within a specified geographic area. Rather, the responsibility of the unit of government involved here extends only to the administration of a junior college system within a certain part of Missouri. Nonetheless, the powers and functions of the junior college district trustees closely parallel those of school board members generally, and the Missouri arrangement is far from unique.[8] Thus, in our view, the case at least potentially presents the

[8] Some 30 of our States make provision for community or junior college districts (see Appendix, *infra*, pp. 43–44).

broad issue whether the equal-population principle of *Reynolds* and *Avery* applies to the district-based election of school board members generally. It is to that important question—which presumably remains unresolved despite this Court's decision in *Avery*—that we direct the substance of our argument.

In the course of developing that argument, we show first that nothing in this Court's decision in the *Sailors* case, on which the Missouri court here placed extensive reliance, prevents application of the equal-population principle to elected school boards, since the scheme there involved was characterized by this Court as an appointive, not an elective, one (*infra,* pp. 10–13). Next, we point out that lower court decisions, both before and after *Sailors* was decided, have consistently held that the equal-population principle is applicable to elected school boards (*infra,* pp. 13–20). Then, turning to this Court's decision in the *Avery* case, we show that both the holding and opinion there, as well as the underlying rationale, strongly support application of the equal-population principle to elected school boards (*infra,* pp. 21–26). We next direct our attention to the points of distinction relied upon by the Missouri court, and demonstrate that neither the fact that a school board may be thought to exercise essentially administrative as distinguished from legislative powers, nor the fact that school districts are special-purpose, single-function units of local government, makes the rationale of *Reynolds* and *Avery* inapplicable (*infra,* pp. 26–34). Finally, we endeavor to show that weighty considerations of public policy,

as well as sound legal reasons, favor application of the equal-population principle to elected school boards (*infra*, pp. 34–42).

I. NOTHING IN THIS COURT'S DECISION IN THE *SAILORS* CASE PREVENTS APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

Since the court below placed considerable reliance on this Court's decision in *Sailors* in determining that the equal-population principle was inapplicable here, we turn initially to a discussion of that case. As summarized in *Avery*, the *Sailors* decision "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations," because of the "administrative nature of the area school board's functions and the essentially appointive form of the scheme employed" (390 U.S. at 485). In our view, that ruling is not controlling here in light of the essentially different situation presented.

Sailors did not involve a board having general authority over public education within a geographic area. More importantly, there the board was not elected at all, but was selected by delegates from each of the local school boards located within the county (387 U.S. at 109–110, n. 6). In distinguishing *Reynolds* and cases such as *Gray* v. *Sanders*, 372 U.S. 368, and *Wesberry* v. *Sanders*, 376 U.S. 1, the Court in *Sailors* pointed out that "[t]hey were all cases where elections had been provided and cast no light on when a State must provide for the election of local offi-

cials" (387 U.S. at 108). In the *Sailors* opinion the Court further noted that, even were it to "assume *arguendo* that where a State provides for an election of a local official or agency, the requirements of *Gray* v. *Sanders* and *Reynolds* v. *Sims* must be met * * *," that would not resolve the question whether, consistent with the Equal Protection Clause, "Michigan may allow its county school boards to be appointed" (*id.* at 109). Having found the "system for selecting members of the county school board" there involved to be "basically appointive rather than elective," the Court regarded it as unnecessary to decide "whether a State may constitute a local legislative body through the appointive rather than the elective process" (*id.* at 109–110). That was so, the Court stated, since the county school board there involved "performs essentially administrative functions" which "are not legislative in the classical sense" (*id.* at 110). In concluding its opinion in *Sailors,* the Court again reiterated the essence of its narrow holding, stating: "Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy" (*id.* at 111).

Thus, despite the fact that *Sailors,* like the instant case, involved a school board, that decision is inapposite here. *Sailors* holds no more than that the equal-population principle is inapplicable where members of a local governmental body exercising essentially administrative functions are appointed rather than elected. The court below improperly relied on the characterization of the Kent County Board of Educa-

tion as "administrative" as entailing the basic *ratio decidendi*. In fact, that language in the *Sailors* opinion was addressed to the question whether the body there involved could constitutionally be chosen by an appointive instead of elective scheme. It could, the Court concluded, because its functions were basically administrative and not legislative in character—the opinion leaving unresolved the question whether a local legislative body may be constituted through the appointive rather than the elective process. That issue is not presented here, since it is undisputed that junior college district trustees in Missouri are elected, not appointed. The straightforward question here is whether there is anything about school boards in general, or the particular body involved, which exempts them from the equal-population principle of *Reynolds*, as applied to the local level generally in *Avery*. In resolving that issue *Sailors* is simply not helpful,[4] and the Missouri court's conclusion that "the non-

[4] This has been the consistent view of the courts and the commentators that have considered *Sailors*, particularly in view of the later holding in *Avery*. See *Meyer* v. *Campbell*, 152 N.W. 2d 617, 620–623 (Iowa Sup. Ct.) (discussed *infra*, pp. 18–20); cf. *Kramer* v. *Union Free School District No. 15*, 282 F. Supp. 70, 74 (E.D.N.Y.), pending on appeal, No. 258, this Term. See also Dixon, *Local Representation: Constitutional Mandates and Apportionment Options*, 36 Geo. Wash. L. Rev. 693, 698–699 (1968); McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 723–724, 730, 736–737 (1968); Martin, *The Supreme Court and Local Government Reapportionment: The Second Phase*, 21 Baylor L. Rev. 5, 15–16 (1969); Sentell, *Avery v. Midland County: Reapportionment and Local Government Revisited*, 3 Ga. L. Rev. 110, 116 (1968); Comment, 19 S.C.L. Rev. 839, 844–845 (1967); Note, 47 N.C.L. Rev. 413, 416 (1969); Note, 21 Vand. L. Rev. 1104 (1968); Note, 21 Vand. L. Rev. 153 (1967); Note, 22 Sw. L.J. 542 (1968).

legislative character of the board in *Sailors* was the determining factor" (A. 36) does not withstand close analysis of that decision.[5]

II. LOWER COURT DECISIONS, BOTH BEFORE AND AFTER *SAILORS* WAS DECIDED, SUPPORT APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

The lower court in *Sailors* was not the only one to confront the issue whether the equal-population principle of *Reynolds* should be applied to elected school boards. At least two other federal district courts squarely faced that question prior to this Court's decision in *Sailors*,[6] and both resolved it in favor of

[5] The limited relevance of *Sailors*, in view of the distinguishing features there involved, was aptly perceived by the dissent here (see A. 49).

[6] In several other cases the same question was raised but was not reached. See *Pitts* v. *Kunsman*, 251 F. Supp. 962 (E.D. Pa.), which related to the composition of an interim body selected in a manner not dissimilar to the method involved in *Sailors* to operate the public school system during a period of consolidation of small, local school districts. There the court, while assuming the applicability of the equal-population principle to elected school boards as a general matter (see *id.* at 964–965), found that principle inapplicable on the special facts there presented (*ibid.*) and decided the case on State law grounds (*id.* at 966–968), ultimately holding the interim body to be improperly constituted. See also *Elberti* v. *Kunsman*, 254 F. Supp. 870 (E.D. Pa.), involving a virtually identical controversy, where the court found "no federal constitutional infirmity" for the reasons discussed in its opinion in *Pitts* (*id.* at 871), but again found the interim body's composition improper on State law grounds (*id.* at 871–873). *Detroit Edison Co.* v. *East China Township School District No. 3*, 247 F. Supp. 296 (E.D. Mich.), affirmed on other grounds, 378 F. 2d 225 (C.A. 6), certiorari denied, 389 U.S. 932, is inapposite, since it involved only a collateral attack on the composition of a local school board and was decided essentially on grounds which did

the principle's applicability. *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa.); *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.). Since those two decisions predate both *Sailors* and *Avery*, and since only one other court, even since *Avery*, has apparently considered this issue—the Iowa Supreme Court in *Meyer* v. *Campbell*, 152 N.W. 2d 617 (discussed *infra*, pp. 18–20)—*Delozier* and *Strickland*, along with *Meyer*, warrant some detailed consideration.

In *Delozier* the districting scheme for a newly fashioned area school board, resulting from the consolidation of previously separate school districts, was attacked as deviating substantially from the equal-population principle of *Reynolds*. Under that scheme, the geographic area encompassed by the new unit was divided into nine districts, each of which was to elect one representative to serve on the area school board (247 F. Supp. at 32). The largest district had about seven times the population of the smallest (*ibid.*). In concluding that the equal-population principle was not limited to statewide elections of legislative bodies, the district court there rejected the argument that (*id.* at 34)

> * * * the status of a local school district, being an arm or agency of the state legislature

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not require reaching the issue whether *Reynolds* applied to elected school boards, although the district court in dicta indicated that, in its view, it did not (see *id.* at 300–302). Holding that the annexation procedure there directly challenged was not invalid, the Sixth Circuit affirmed, expressing no view on the question of *Reynolds*' applicability (378 F. 2d at 228–230), and certiorari was denied by this Court.

> to administer its educational system makes it immune from the constitutional requirement [of *Reynolds* and *Gray* v. *Sanders*]. * * *

Continuing, the court reasoned that (*id.* at 35)

> [t]he legislature of the State of Pennsylvania has delegated the management of its educational system in local areas to local school boards. These boards, in the class of school district in the present case, and in most other classes, are elected by popular vote. The state has also delegated to such boards the power to levy taxes, and in most communities the various taxes levied by the school boards are the largest local tax imposition. While school boards are subject to numerous limitations in the exercise of local powers, these limitations are no less in scope or variety than the limitations imposed on other governmental subdivisions or municipal corporations. The encroachment of state control and the extent and variety of state financial aid extends to all forms of political subdivisions in the state as well as to school boards.

Noting that the equal-population "principle has been applied to various elective bodies, local, municipal, county and school districts, where that body is elective and exercises legislative powers" (*ibid.*), the district court determined that "the plan of representation [there] adopted * * * violates the mandate of [the] Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States" (*id.* at 36).

In similar fashion, the district court in *Strickland* held that the equal-population principle applied to a

county school board whose members were elected on a district basis. There a Tennessee statute provided for the election of the eleven members of the county school commission from unequally populated school zones, one of which "contain[ed] at least one-third of the county's total population and [was] from three to fifteen times more populous than the other zones" (256 F. Supp. at 825). As noted by the district court, the board's powers "include, *inter alia*, the hiring of teachers and other school employees, regulation of pupil transportation, the approval of an annual school budget and the purchase of supplies and equipment" (*ibid.*). Significantly, the board did not have any power of taxation, as noted by the dissent (*id.* at 836). Nonethless, the court determined that the districting scheme diluted the efficacy of the votes of those residing in the populous areas and deprived them of equal representation on the board. It rejected the contention that "a local representative governmental body which is primarily administrative rather than legislative in character" (*id.* at 825) need not conform to the equal-population principle (*id.* at 827). Concluding that "the rationale of * * * *Reynolds* * * * is logically as applicable to the backwaters of representative government at the local level as to the fountainhead of representative government at the state level" (*id.* at 826), the court reviewed and relied upon a number of other local government apportionment decisions, including *Delozier* (*ibid.*). In holding the existing discrimination "invidious", the district court stated (*id.* at 827):

> Since we can find no basis for applying the "one man, one vote" rule to the congeries of powers possessed by the Legislature itself and at the same time denying its application to a subordinate body simply because it possesses a fractional part of those powers, so long at least as the fractional part cannot be said to be insignificant or unimportant, we * * * hold that the apportionment provisions of the Act complained of are void as violative of rights secured by the Equal Protection Clause of the Fourteenth Amendment.[7]

Thus, the only two reported decisions on the question whether *Reynolds* applied to elected school boards prior to this Court's decision in *Sailors,* aside from the lower court decision in *Sailors* itself (254 F. Supp. 17),[8] held the equal-population principle applicable.

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[7] A concurring opinion noted, almost in anticipation of the Court's holding in *Avery* in this regard, that "[i]t is fruitless * * * to pursue the elusive distinction between legislative and administrative functions," and suggested that "[s]o long as a subordinate body is vested with significant and important powers of government, whether they be labelled legislative, or administrative, or both, [there is] no reason why it should be permissible under the equal protection clause for a state arbitrarily to debase the value of one person's vote in favor of another" (*id.* at 836).

[8] It should be noted that the county school board involved in *Sailors*, as distinguished from those involved in the *Delozier* and *Meyer* cases (but like that in *Strickland*), is not classified as an "independent school district" by the Bureau of the Census. See Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization", p. 371. Such intermediate Michigan school districts are treated for statistical purposes "as joint activities of constituent school districts" (*ibid.*), while the units involved in the Pennsylvania and Iowa cases are regarded as separate units of local govern-

Both *Delozier* and *Strickland*, it might be pointed out, were referred to by this Court with apparent approval in its opinion in *Avery* (see 390 U.S. at 479, nn. 3, 4).

Subsequent to this Court's decision in *Sailors*, but before *Avery* had been decided, the Iowa Supreme Court considered the question whether the equal-population principle was applicable to elected school boards, and concluded that it did apply. *Meyer* v. *Campbell*, 152 N.W. 2d 617. There the body involved was a county school board which exercised general supervision over public education within the entire geographic area. And there a state statute provided for the election of county school board members (except for one member elected at large) from four election areas "as nearly as possible of equal size and contiguous territory" (*id.* at 619). Thus, the voters of each area would elect two members of the board, the one from their election area and the at-large member. One election area contained a considerably larger number of people than the other three, which were roughly equal in population (*ibid.*). Reading *Sailors* as holding simply that the equal-population principle was inapplicable to school boards exercising essentially administrative functions when the members thereof were appointed rather than being elected, the Iowa court concluded that "[w]hen the legislature changed the method of selection of the

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ment (see Appendix, *infra*, pp. 43–44). Moreover, the majority opinion of the three-judge court in *Sailors* said little more than that it was expedient to wait for this Court to determine whether the equal-population principle should be applied at the local governmental level (see 254 F. Supp. at 28–29). Compare, however, the dissenting opinion (*id.* at 18–28).

county boards to elective rather than appointive * * * the members [thereof] then became the direct representatives of the people, and the state and federal constitutions require their election on an equal representation basis" (*id.* at 620). This was so, the court indicated, because "[t]he fact that an elective method of selection has been chosen implies that each citizen is thought to have an equal stake in [the] composition [of such school boards]" (*ibid.*). *Sailors* was readily distinguished as having "dealt with the *appointment* of local administrative officials and not the election of them" (*id.* at 621), and the Iowa court concluded (*ibid.*):

> Since it is a basic principle of representative government that the weight of a person's vote does not depend on geographical boundaries, it follows logically that any inferior *elective* body, that is representative of the people, be representative of all the people equally. * * *

Since the Iowa legislature had chosen "to make members of the board elective rather than appointive, it intended that these members represent the people and not geographical land areas," and "[e]ach voter similarly situated is entitled to equal reprsentation," the court determined (*ibid.*). Concluding that the county school boards exercised "legislative functions" (*id.* at 622), although of a limited and attenuated variety, the Iowa court went on to hold that, consistent with *Sailors,* "where the legislature chooses to submit the selection of an official or board to the electorate, it is of no consequence whether its functions affecting the personal and property rights of the people

are administrative or legislative" (*id.* at 623).[9] Accordingly, the court held that the area-based districting scheme was unconstitutional, and that the election of county school board members "must be made on a population basis, not upon area" (*id.* at 624).

Having the benefit not only of the decisions and opinions in *Delozier, Strickland* and *Meyer,* but also the gloss of this Court's discussion and holding in *Avery,* it is surprising that the court below—which had earlier held the equal-population principle applicable to the election of city council members in *Armentrout* v. *Schooler,* 409 S.W. 2d 138 (Mo. Sup. Ct.)—rejected the reasoning of these cases and concluded that the equal-population principle was inapplicable to the election of school boards. In so doing, the Missouri court invoked *Sailors,* charging the Iowa Supreme Court in *Meyer* with having "misconstrued the opinion in *Sailors*" (A. 34).[10] We have already indicated why any reliance on *Sailors* in this regard is misplaced. It remains to show that the efforts of the court below to distinguish *Avery* are unconvincing, and it is to that decision that we now direct our attention.

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[9] This, of course, is exactly what this Court determined in *Avery* in regard to the suggested distinction between legislative and administrative functions, albeit there as to a county governing body and not a school board (see 390 U.S. at 482).

[10] The Missouri court rejected *Delozier* and *Strickland* along with *Meyer,* viewing the courts in all of them as having erred in failing "to distinguish between school districts and local bodies having general governmental powers and functions" (A. 34), obviously seeking, in suggesting such a distinction, to rely on this Court's decision and opinion in *Avery* (see 390 U.S. at 485–486).

III. BOTH THE HOLDING AND OPINION OF THIS COURT IN THE *AVERY* CASE, AS WELL AS ITS UNDERLYING RATIONALE, SUPPORT APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

In *Avery* the Court put to rest the confusion and uncertainty which had theretofore existed by holding that the equal-population principle of *Reynolds* was generally applicable at the local governmental level. That case involved a county governing body, while the instant case involves a school board. Because of this difference, and in reliance on certain language in the Court's opinion in *Avery* as well as on *Sailors*, the Missouri court here found *Avery* not controlling. In so concluding, we submit, the court below erred. Carefully analyzed, both the holding and opinion in *Avery* provide substantial support for application of the equal-population principle to elected school boards. Moreover, the underlying rationale of that decision, just like that of *Reynolds* and similar cases, argues strongly for holding that when members of a local school board are elected, under state or local law, by the people on a district basis, those districts are required by the Equal Protection Clause to be substantially equal in population.

In its opinion in *Avery* the Court started with the estabished proposition that "[t]he Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions" (390 U.S. at 479). Interestingly, it cited and quoted from *Cooper* v. *Aaron*, 358 U.S. 1, in support of this proposition (390 U.S. at 479–480). *Cooper* v. *Aaron* was of course a case involving a school board, just like the instant case. The Court then expanded further on this theme, stating that "[a]lthough the

forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment" (390 U.S. at 480). School boards, like other local bodies, are subject to and are required to comply with the Equal Protection Clause in regard to matters such as racial discrimination. *E.g., Brown* v. *Board of Education,* 347 U.S. 483; *Goss* v. *Board of Education,* 373 U.S. 683; *Bradley* v. *School Board,* 382 U.S. 103. There can be no doubt, then, that the actions of school districts, no less than the actions of counties, cities and towns, are within the ambit of the Equal Protection Clause.

Next the Court in *Avery* directed its attention to the specific issue of apportionment. It first stated that "when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process" (390 U.S. at 480). Then, in language that appears to come close to resolving the question presented in the instant case, the Court indicated (*ibid.*):

> If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, *school board,* or county governing board are elected from districts of substantially unequal population. * * * [Emphasis added.]

That reference to school boards was of course dictum, for the *Avery* case itself involved a county governing board. Nevetheless, the inclusion of school boards in this listing is significant, indicating that the logical sweep of the underlying rationale of the decision there encompasses those bodies as well.

The opinion proceeds by stating: "That the state legislature may itself be properly apportioned does not exempt subdivisions from the Fourteenth Amendment" (390 U.S. at 481). This is so, the Court noted, because "the States universally leave much policy and decisionmaking to their governmental subdivisions," and "do not attempt to reach those countless matters of local concern necessarily left wholly or partly to those who govern at the local level" (*ibid.*). It is clear beyond cavil that "much policy and decisionmaking" is consistently left to school districts, and that such matters are preeminently ones "of local concern necessarily left" in large part to school board members. In noting that, with respect to local governing bodies, "the States characteristically provide for representative government—for decisionmaking at the local level by representatives elected by the people" (*ibid.*), the Court's language at least implicitly included school boards. An extremely high percentage of school board members in this country are selected through the elective process—about 93 percent (see Appendix, *infra,* pp. 43–44). Admittedly some 90 percent of those elected are elected at large, rather than from districts. Nonetheless, the fact that the vast majority of school board members are elected rather than appointed shows a considered preference for these

bodies being representative in character. Where they are elected from districts, the rationale of the Court's approach in *Avery* strongly supports application of the equal-population principle there held applicable to county governing boards similarly elected. School districts, still the most numerous category of local government despite continuing reduction in their total number through consolidations, particularly in rural areas,[11] are plainly "institutions of local government" which constitute "a major aspect of our system" and whose "responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens" (390 U.S. at 481).

Turning to one of the central contentions made against extending the equal-population principle to the local governmental level, the Court in *Avery*

[11] See Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization," p. 1, which showed that, as of 1967, there were 81,248 units of local government in the United States, of which there were 3,049 counties, 18,048 municipalities, 17,105 townships, 21,264 special districts, and 21,782 school districts. In addition to these 21,782 independent school districts, there were also some 1,608 "dependent" school systems, operated in the main by other units of local government, resulting in a total of 23,390 public school systems in this country (*id.* at 6), the total enrollment of which amounted to about 43.8 million pupils, as of October 1966 (*ibid.*). The marked decline in the total number of school districts during the past 25 years is exemplified by the following chart (*id.* at 3):

School year	*Number of school districts*
1966–67	21,872
1961–62	34,678
1956–57	50,454
1951–52	67,355
1941–42	108,579

hurriedly dismissed any reliance on labelling the functions of a particular body as "administrative" or "legislative", noting that the body there involved, and by implication most local governing bodies, "cannot easily be classified in the neat categories favored by civics texts" (*id.* at 482).[12] Recognizing that most local bodies have an amalgam of powers and functions which defy singular characterization, and that these bodies are not only numerous but extremely diverse, the Court determined instead to take a "pragmatic approach" to the problem of determining which of them were covered by the equal-population principle (*id.* at 482–483). Finding that the board there involved had "the authority to make a substantial number of decisions that affect all citizens" of the county (*id.* at 484), the Court held the Equal Protection Clause "permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body" (*id.* at 485). Again, in concluding, the Court reiterated the "one ground rule for the development of arrangements of local government" that it was laying down in *Avery*—"a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population" (*id.* at 485–486).

Thus, the question here, insofar as the relevance of the *Avery* holding is concerned, resolves itself into whether school districts, like counties and cities, are

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[12] See, in this regard, Note, 53 Va. L. Rev. 953, 960–961, 965–966 (1967).

units of local government having general governmental powers over the entire geographic area that they serve.[13] In the instant case, the Missouri Supreme Court answered that question negatively, and concluded that *Avery* was inapplicable to elected school boards. That determination, we submit, was erroneous, for school districts, despite their special-purpose, single-function status, are nonetheless units of local government with general powers over the area they serve in regard to the critical subject of education. It is to this issue, on the basis of which the Missouri court distinguished *Avery,* that we now turn.

IV. NEITHER THE FACT THAT A SCHOOL BOARD MAY BE THOUGHT TO EXERCISE ADMINISTRATIVE AS DISTINGUISHED FROM LEGISLATIVE POWERS, NOR THE FACT THAT SCHOOL DISTRICTS ARE SPECIAL-PURPOSE, SINGLE-FUNCTION UNITS OF LOCAL GOVERNMENT, MAKES THE RATIONALE OF *REYNOLDS* AND *AVERY* INAPPLICABLE

As discussed earlier (*supra,* pp. 12–13), the Missouri Supreme Court, in holding the equal-population principle inapplicable, repeatedly intimated that the body involved here is not covered by the equal-population principle because its functions are essentially administrative and not legislative in character. Putting to one side the court's misplaced reliance on *Sailors,* and its misreading of *Avery* in this regard, we now turn to that argument directly.

As we developed at some length in our *amicus* brief in the *Avery* case,[14] the constitutional touchstone of

[13] See, *e.g.*, McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 729 (1968).

[14] See brief for the United States as *Amicus Curiae*, *Avery* v. *Midland County*, No. 39, 1967 Term, pp. 41–57.

the Court's decision in *Reynolds* is the Equal Protection Clause, and the focus of the Court there was on the individual voter, not on the nature of the bodies whose apportionment was at issue. The essence of *Reynolds*—and of *Avery*'s application of *Reynolds* to local government—is that a citizen's right to vote, where conferred under State law, cannot be diluted or debased simply because of where, within a particular area, that person happens to reside. Unless the equal-population principle is applied to the district-based election of school board members, citizens similarly situated would be treated differently, as to the weight of their vote, on the basis of where they happen to live, regardless of whether such a body be viewed as administrative, or legislative, or executive, or some combination of all of these.[15]

We further developed, in our *Avery* brief, the notion that a legislative/administrative delineation would not only be difficult to sustain as a constitutional matter, but that it would moreover be wholly impractical to seek to apply such a distinction at the local governmental level. This stems from the fact that most local bodies constitute the repositories of a varied array of powers and frequently engage in a

[15] We do not contend that there is anything in the nature of school boards which requires that their members be elected, instead of appointed. There is no need to reach any such issue here, for an elective system is plainly provided for in the instant case. Our position, then, is grounded essentially on what this Court stated in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 665: "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause * * *."

number of different and diverse functions. This is so not only with regard to general-function units like counties and cities, but also with respect to at least some more specialized units, such as school districts. While the subject with which school boards deal is a single one, in doing so they undertake a variety of tasks that defy easy description. Most school boards have taxing powers (see Appendix, *infra*, pp. 43–44), an authority traditionally viewed as legislative in character and one of the important powers of the county governing board in the *Avery* case which led the Court to hold the equal-population principle applicable there (see 390 U.S. at 483–484). Like the junior college district involved here, many school districts have the power of condemnation as well. Many of them, again as the unit here, have the authority to issue bonds. And most of them exercise a number of other powers regarding matters such as personnel, curricula, transportation, discipline, and the like that are not easily classified. Like other local bodies, school boards have a mixture of powers which simply forbids facile categorization. As we concluded in our *Avery* brief, the sort of functional approach which some suggest is one that, in point of fact, would prove unworkable in practice and virtually impossible of reasoned and judicially economical application. That view, we submit, was adopted by this Court in *Avery*, and it applies no less to school boards than to the county governing board there involved.

Indeed, if anything, the instant case is an easier one for application of the equal-population principle than *Avery*. There the Court was faced with the dif-

ficult problem of "overlapping jurisdiction." The Court in *Avery* had necessarily to concede that the county board there involved concentrated much of its attention on matters affecting the rural areas of the county, while the city council of Midland served, in the main, as the general-function unit of local government for residents of the urban area (see 390 U.S. at 483–484). Despite this, the Court found that the county board had "the authority to make a substantial number of decisions that affect all citizens, whether they reside inside or outside the city limits of Midland" (*id.* at 484). With respect to school boards, however, no overlapping jurisdiction problem is ordinarily presented. As a general matter, independent school districts are autonomous with respect to the matter of public education within the geographic area which they serve. No citizen living within that area can be said to be affected in a significantly different fashion by actions of his local school board than another citizen situated in some other part of the same area. In this respect, then, the instant case presents less difficulty with respect to the application of the equal-population principle than *Avery*.

In spite of these considerations, the Missouri court here found *Avery* distinguishable. In doing so it reasoned that "[a] school district, unlike a municipal corporation (city or county) is an instrumentality of the state created for one single purpose and with one single function,—education" (A. 34). The court then proceeded to detail the powers and duties of a junior

college district under Missouri law—which do not appear to differ significantly from those of the county board involved in *Avery* except that they relate solely to the subject of education—and concluded that such a school district "has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers" (A. 35), language rather reminiscent of that of the Texas Supreme Court in regard to commissioners courts in that State (see 390 U.S. at 483). That groundwork having been laid, the Missouri court stated its result: "We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is ***not*** a 'unit of local government having general governmental powers over the entire geographic area served by the body' " (A. 36).

Thus, apart from its misplaced reliance on *Sailors* and the legislative/administrative dichotomy, the Missouri court, in the last analysis, found *Avery* distinguishable because of the fact that the school district involved here, like all school districts, is a special-purpose, single-function unit of local government which, therefore, lacks "general governmental powers over an entire geographic area" as required by the opinion in that case. But school districts do, we submit, exercise such general governmental powers in the sense that that phrase was intended to be used in the *Avery* opinion.

As the opinion in *Reynolds* points out, the Equal Protection Clause "has been traditionally viewed as

requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged" (377 U.S. at 565). Applying that settled principle, the result there flowed from a finding that "[w]ith respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live" (*ibid.*). An obvious corollary is that where persons are not similarly situated *vis-à-vis* the particular body, different treatment is permissible and classifications are valid so long as they are rationally related to and take properly into account the differences in how the persons are situated. In the apportionment context, where a governmental body's actions do not touch or involve all citizens generally, but only a discrete and identifiable part of the citizenry in a significant way, then a districting plan that rationally takes this consideration into account may comport with the requirements of the Equal Protection Clause, even though entailing substantial deviations from a population basis.[16]

It was in view of these considerations, it seems ap-

[16] See, *e.g.*, *Thompson* v. *Board of Directors of the Turlock Irrigation District*, 29 Court Decisions on Legislative Apportionment (National Municipal League) 9 (Calif. Ct. App.), where such an approach was taken with respect to the apportionment of seats on the governing body of an irrigation district, a special-function unit whose purpose was apparently limited to distributing water to rural lands within its boundaries (see *id.* at 12–13). While holding the equal-population principle inapplicable, the California court did find the districting invalid as a matter of State law and required that some adjustment be effected (see *id.* at 14–18). Cf. *Kramer* v. *Union Free School District No. 15*, 282 F. Supp. 70, 74–75 (E.D.N.Y.), pending on appeal, No. 258, this Term (but see

parent, that the court in *Avery* stated (390 U.S. at 483–484):

> Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions. * * *

There the Court went on to conclude that that question was not presented, since the county governing board involved had the authority to make a variety of important decisions affecting all citizens of the county, wherever they resided (*id.* at 484). In other words, for Equal Protection Clause purposes, all citizens of Midland County were situated in a substantially similar fashion. It was against this background, moreover, that the Court made reference to "units of local government having general governmental powers over the entire geographic area served by the body" as being within the ambit of the equal-population prin-

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the dissenting opinion in that case of Judge Weinstein, 282 F. Supp. at 75–86, and compare the Missouri court's reliance on an article by the same individual for the proposition that "it is doubtful if the one man, one vote principle should be applied to *special purpose* units of local government which have limited purposes and functions" (A. 34–35)). However the *Kramer* case is decided by this Court, it should be noted, it will not be dispositive in the instant case since *Kramer* is a voting, not an apportionment, case. Cf. also *Cipriano* v. *City of Houma*, 286 F. Supp. 823 (E.D. La.), pending on appeal, No. 705, this Term, like *Kramer* a voting, not an apportionment, case; and see the Second Circuit's earlier opinion in *Kramer*, reported at 379 F. 2d 491.

ciple (*id.* at 485). Thus, the Missouri court's reliance on this phrase as determinative, and its focus on the fact that school districts are special-purpose, single-function units of government as a ground for distinguishing *Avery*, are demonstrably inappropriate.

In our view, the fact that school districts are special-purpose, single-function units of local government is not determinative with respect to whether the equal-population principle of *Reynolds* and *Avery* should be held applicable to the district-based election of school board members. Indeed, this consideration at best merely poses the question the Court found it unnecessary to reach in *Avery*—whether deviations from population-based representation were permissible with respect to special-purpose units "assigned the performance of functions affecting definable groups of constituents more than other constituents" (390 U.S. at 483–484). But once the nature of public education is considered, and the pervasive impact that local school boards and the decisions they make have on all citizens is taken into account, it seems clear that there is no more need to reach that question here than there was in *Avery*. Just as with county governing boards such as that involved in *Avery*, school boards across the country have "the authority to make a substantial number of decisions that affect all citizens" (*id.* at 484). No ascertainable or definable group within the citizenry generally is in a substantially different situation with respect to school boards. Whether parents, taxpayers or simply members of the community, all citizens have a vital interest in, and are significantly affected by, the actions of local

school boards. At all events, there was no showing here that any even arguably rational differences among citizens in this regard played any role in the shaping of the Missouri statute here challenged, which appears to sanction deviations from a population basis simply in order to disfavor more populous areas. Within their sphere, school boards exercise governmental powers generally affecting all citizens residing within the geographic area which they serve. They should thus be held within the ambit of the equal-population principle where, as here, their members are elected on a district basis.

V. SOUND POLICY CONSIDERATIONS ALSO FAVOR APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

There are, finally, weighty considerations of public policy which support application of the equal-population principle to elected school boards.[17] As this Court said in *Avery* (390 U.S. at 481): "[I]nstitutions of local government have always been a major aspect of our system, and their responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens," since there are "countless matters of local concern [which are] necessarily left wholly or partly to those who govern at the local level" (*ibid.*). This is preeminenty true with respect to public education, which, more than any other subject, has traditionally been viewed as an essentially local matter. Moreover, the Court also

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[17] See generally, in this regard, McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 730–731 (1968).

pointed out that, in establishing local governments, "the States [have] characteristically provide[d] for representative government—for decisionmaking at the local level by representatives elected by the people" (*ibid.*). Again, this is most particularly so with regard to school districts, for over 93 percent of the school boards in this country are composed of representatives elected by the people (see Appendix, *infra*, pp. 43–44; see *supra*, pp. 23–24). About 90 percent of these elected school boards are elected on an at-large, instead of a district basis (*ibid.*), but that hardly argues against holding the equal-population principle applicable to school boards generally so as to require that, where districts are provided for, as in the instant case, they must be substantially equal in population.

Indeed, the fact that the overwhelming majority of school boards are elected indicates a distinct preference for direct participation by the citizen in the shaping of educational policies. Yet that participation can truly be effective, and the body in fact as well as in form representative, only when all citizens are given the opportunity to elect school board members on an equal basis. Moreover, school districts are generally single-function governmental units, indicating a considered desire that issues regarding education be isolated from other matters of governmental concern and that specific viewpoints on educational questions be expressed by the electorate. In these circumstances, the right to vote for school board members should be vigorously protected against dilution and undervaluation through devious districting schemes. Because of the importance of public education and its pervasive im-

pact in our society, the right to vote for school board members may well be more important than the right to select many other representatives.

Education unquestionably plays a critical role in the lives of all citizens and is a matter of foremost concern of government and governed alike. While public education is rarely a purely local responsibility, local units of government typically exercise broad discretion and have considerable autonomy in this vital area. School boards remain the most numerous and common of the various types of local governmental bodies (see note 11, *supra*). Indeed, the 21,782 independent school districts in this country constitute over one-fourth of the total number of local governmental units (*ibid.*). School boards are important bodies not only because of their number, but because of the financial impact they have in our society. Certainly from the point of view of expenditures, education is the "most important function" of local governments today no less than it was 15 years ago when this Court decided *Brown* v. *Board of Education,* 347 U.S. 483, 493. Expenditures for public education far surpass any other single item of governmental activity at the local level. In 1966–67 about 48.5 percent of the direct general expenditures of local governments was for education—some $28.8 billion out of a total of about $59.5 billion.[18] Not only, then, is the proportion

[18] Dept. of Commerce, Bureau of the Census, Governmental Finances in 1966–67, p. 23. Of this $28.8 billion, about $1 billion went for institutions of higher education, with the remainder going to local elementary and secondary schools (*ibid.*; see generally *id.* at 8–9).

of local government expenditures for education significant—almost one-half of the total—but the figures involved are, as an absolute matter, quite substantial. Public education in this country is big business, and it is getting bigger each year as pupil enrollments increase and costs of operation continue to rise.[19] Indeed, although no figures are readily available, it can be safely assumed that the operating budgets of some of our larger school systems exceed the expenditures of a number of our smaller States.

Perhaps even more significant than these considerable and growing financial expenditures for public education is the qualitative impact that school districts have on the lives of all those living in the area subject to their jurisdiction. Decisions regarding the operation of school systems often stir more public interest and controversy than any other subject handled at the local governmental level. School boards frequently operate rather independently of State or other local control, and exercise powers which have a substantial impact on all citizens of the community, whether they have children of school age, pay taxes that directly support the school system, or simply live and work there. School boards usually have authority over educational facilities, including decisions such as when and where to build new school buildings, what sort of special equipment to provide, and the like. They exercise control over all personnel con-

[19] Expenditures for public education have increased by over $10 billion in the last five years. See Governmental Finances in 1966–67, *supra*, at 18.

nected with the school system, including teachers, administrators, and other employees. In this regard they deal with thorny and difficult problems such as teacher salaries, qualifications, assignments, promotions, and dismissals. They also prescribe curricula for use in the public schools, and play a role in determining what books are to be utilized. And they typically have the ultimate responsibility in the increasingly difficult and often delicate matter of student discipline.[20] More generally, most school districts levy and collect taxes in substantial amounts, and many of them have the power to condemn property. School boards also ordinarily fix their budgets, and, of particular interest to the United States, administer an increasing number of federal educational assistance programs.[21] Most of them also have the authority to annex areas and to make determinations regarding the boundaries of school-attendance zones. Similarly, they make important decisions such as whether special pro-

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[20] See, *e.g.*, *Tinker* v. *Community School District*, No. 21, this Term, decided February 24, 1969 (slip op., pp. 4–5).

[21] In 1966–67 the total federal expenditures for education amounted to about $3.9 billion, much of which went directly to local governmental units under a variety of assistance programs. See Governmental Finances in 1966–67, *supra*, at 17, 24. Moreover, these expenditures have been growing rapidly in the past few years, having tripled in amount in the last three years (*id.* at 17). Federal assistance programs include those under the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. (Supp. II) 241a *et seq.*, 821 *et seq.*), the National Defense Education Act, as amended (20 U.S.C. 421 *et seq.*), and the National School Lunch Act (42 U.S.C. 1751 *et seq.*). Most of the federal assistance takes the form of various grants-in-aid made to State and local governments, including, most importantly, local school boards.

grams of remedial and adult education will be provided, whether shared-time programs with private schools will be initiated, and whether public school busses will be provided for children attending private schools. In areas where racially separate public school systems previously prevailed, they determine what course to pursue to terminate racial segregation in the schools and to achieve a truly integrated system which will provide all students, whatever their race, with a good education on the basis of complete equality. Throughout the country they are called upon to resolve the pressing problems of ensuring that children living in our urban ghetto areas are provided with an educational opportunity equal to that of those who are better advantaged. In short, the school boards of this country are responsible for a whole gamut of important matters, most of which do not admit of easy resolution and many of which are of vital interest to the citizenry generally, and they are typically given a variety of substantial powers to carry out their tasks, the exercise (and sometimes inexercise) of which has a profound effect on the lives of all Americans.

School boards have been an important unit of local government since the emergence of the public school systems in this country during the last century. As part of government closest to the people, they constitute instrumentalities in which active citizen participation in matters of community interest can be most effectively realized. Citizens are likely to have more familiarity with, and thus a greater concern for the outcome of, problems within the cognizance

of local units of government, like school districts. And the demands on school boards are growing. Particularly in our metropolitan areas, with the rapid growth of urbanization, the influx of persons from rural areas, and the greater concern with obtaining an adequate education, the pressures on local governments, including school districts, are increasing. The already fast growth of our population has been outstripped by the even faster growth of our school-age population. This, along with the expansion of knowledge during the past several decades, has accentuated the complexity of the problems facing those officials responsible for public education, especially in densely populated urban areas. Against this background, significant progress in public education can be achieved only through the enlightened operation of our school systems by viable governmental entities fairly representative of the people.

Malapportionment at the local level almost invariably results in governing bodies which are less than wholly responsive to the more populous areas where the problems of public education are most difficult. If decisions on these problems are to be made in the democratic tradition, they must be made by governing bodies which are truly representative in character, are sensitive to the wants and needs of the community, and are committed to a continuing search for solutions through innovation and through effort. Of specific concern to the United States is the fact that education is a vital matter for members of various minority groups in this country which have long been the victims of discrimination. With them in mind, the Voting Rights Act of 1965 (42 U.S.C. (Supp. II)

1973 *et seq.*) "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century" (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 308). Yet, the salutary goal of that legislation will not be fully realized if discrimination against minority groups can be perpetuated,[22] albeit indirectly, through the maintenance of malapportioned local governing bodies.

Effective involvement in government at the local level may be more meaningful for newly enfranchised voters than the right to vote for congressmen or State legislators. The most urgent needs and the most pressing interests of these citizens often relate to those everyday matters and basic programs which are within the purview of local elected officials, and not infrequently school board members. And on the local level constituencies are relatively small, so that the voter-representative relationship tends to be far more direct. Voices of minority group voters and their elected representatives might be somewhat muted at the national and State levels by those of the majority. But members of local governing bodies, such as school boards, importantly dependent on these voters for election and reelection, might be expected to be more responsive to minority groups and more interested in handling their detailed, day-to-day problems. Reliance on State legislatures and the federal government to meet their needs is simply insufficient.

[22] Cf. two of the Mississippi cases—*Fairley* v. *Patterson*, No. 25, this Term, and *Bunton* v. *Patterson*, No. 26, this Term—decided along with *Allen* v. *State Board of Elections*, Nos. 3, *et al.*, this Term, decided March 3, 1969.

Properly apportioned local governing bodies are essential in this regard.

CONCLUSION

For the reasons stated, the judgment of the Supreme Court of Missouri should be reversed and the cause remanded for further proceedings not inconsistent with an opinion concluding that the equal-population principle of *Reynolds* and *Avery* is applicable to elected school boards such as the junior college district board of trustees involved in the instant case.

Respectfully submitted.

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APPENDIX

SCHOOL DISTRICTS
(INCLUDES ONLY THOSE CLASSIFIED AS "INDEPENDENT" BY BUREAU OF THE CENSUS)

	Total	Elected	Appointed	Taxing power	Community or junior college districts
Alabama	119	67	52	All	
Alaska	[1] 1	1	None	None	
Arizona	242	All	None	All	X
Arkansas	402	All	None	All	X
California	1,239	1,237	2	All	X
Colorado	191	Most	Few	All	X
Connecticut	[1] 9	All	None	None	
Delaware	50	Most	Few	All	
District of Columbia	1	All	None	None	
Florida	67	All	None	All	X
Georgia	194	Some	Some	Most	X
Hawaii	[2] None				
Idaho	120	All	None	All	X
Illinois	1,350	Most	Few	All	X
Indiana	399	Most	[3] Few	All	X
Iowa	478	All	None	All	X
Kansas	360	358	2	All	X
Kentucky	200	All	None	All	X
Louisiana	67	All	None	All	X
Maine	[1] 65	Some	Some	All	X
Maryland	[4] None				
Massachusetts	[1] 44	Some	Some	All	X
Michigan	935	All	None	All	X
Minnesota	1,282	All	None	All	
Mississippi	161	Some	Some	All	X
Missouri	870	All	None	All	X
Montana	713	Most	Few	All	X
Nebraska	2,322	All	None	All	X
Nevada	17	All	None	All	
New Hampshire	[1] 181	Most	Few	All	
New Jersey	[1] 522	All	None	All	X
New Mexico	90	All	None	All	X
New York	[1] 916	Most	Few	All	X
North Carolina	[5] None				X
North Dakota	538	All	None	All	X
Ohio	[1] 710	All	None	All	X
Oklahoma	960	All	None	All	X
Oregon	398	All	None	All	X
Pennsylvania	749	747	2	All	X
Rhode Island	[6] 3	None	All	All	
South Carolina	108	Few	Most	Some	
South Dakota	1,984	All	None	All	
Tennessee	[7] 14	Some	Some	Some	
Texas	1,306	All	None	All	X
Utah	40	All	None	All	
Vermont	297	Most	Few	Some	
Virginia	[8] None				

SCHOOL DISTRICTS (INCLUDES ONLY THOSE CLASSIFIED AS "INDEPENDENT" BY BUREAU OF THE CENSUS)—Continued

	Total	Elected	Appointed	Taxing power	Community or junior college districts
Washington	346	All	None	All	X
West Virginia	55	All	None	All	
Wisconsin	519	Most	Few	Some	
Wyoming	177	All	None	All	
Total	21,782	20,246	[9] 1,536	([10])	[11] 20

[1] All others dependent.
[2] Handled by State government.
[3] Some governed by *ex officio* members.
[4] All dependent; all but 1 appointed.
[5] All dependent; some elected.
[6] All others dependent; all elected.
[7] All others dependent; some elected.
[8] All dependent; all appointed.
[9] Figures derived somewhat arbitrarily by attributing fractions to terms used as follows: Most—¾; Some—½; Few—¼.
[10] No approximation possible.
[11] States.

Source: Department of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization," "Individual-State Descriptions," pp. 297 *et seq.*

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As the above figures show, approximately 93 percent of all members of the governing boards of independent school districts in this country are elected, and only 7 percent are appointed. Even some of the members of "dependent" school boards are elected, either directly or by virtue of their *ex officio* capacity.

A sampling of State statutes in States having large numbers of elected school boards showed that about 90 percent of these are elected at large, and only 10 percent on a district basis. States sampled were: California, Illinois, Kansas, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Washington, Wisconsin, and Wyoming.

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